
TIMOTHY P. KLEIN	:	BEFORE THE SCHOOL ETHICS COMMISSION
 	:	
v.	:	
 	:	
SUE HOGATE,	:	Docket No. C33-04
ELSINBORO BOARD OF EDUCATION	:	
SALEM COUNTY	:	
 	:	
	DECISION	
 	:	

PROCEDURAL HISTORY

This matter arises from a complaint filed on May 24, 2004, by Timothy Klein alleging that respondent, Sue Hogate, a member of the Elsinboro Board of Education (Board), violated N.J.S.A. 18A:12-24.1(g) of the Code of Ethics for School Board Members in the School Ethics Act by discussing with the complainant details regarding the chief school administrator's contract and specifics regarding a multiple handicapped child. The complainant further alleges that respondent violated N.J.S.A. 18A:12-24.1(g) by using her position as a Board member to get certain infractions taken off her child's record. The respondent answered the complaint and denied all of the allegations and requested that the Commission impose penalties on the Complainant for filing a frivolous complaint.

On September 27, 2004, the Commission notified the parties that the complaint had been placed on the agenda for the October 26, 2004, Commission meeting. Complainant attended the meeting and testified before the Commission. Respondent did not attend the meeting. At its public meeting on October 26, 2004, the Commission voted to find no probable cause to credit the allegations that the respondent violated N.J.S.A. 18A:12-24.1(g) of the Code of Ethics for School Board Members and dismissed the complaint. The Commission adopted this decision at its meeting of November 23, 2004.

ANALYSIS

Complainant alleges that respondent violated N.J.S.A. 18A:12-24.1(g) of the Code of Ethics for School Board Members in the School Ethics Act when she discussed with him the nonrenewal of the chief school administrator's contract and the cost of the living arrangements of a multiple handicapped child whom respondent mentioned by name. Complainant further alleges that respondent violated N.J.S.A. 18A:12-24.1(g) by using her position as a Board member to get certain infractions taken off her child's record.

N.J.S.A. 18A:12-24.1(g) provides:

I will hold confidential all matters pertaining to the schools which, if disclosed, would needlessly injure individuals or the schools. In all other matters, I will provide accurate information and, in concert with my fellow board members, interpret to the staff the aspirations of the community for its school.

Complainant bears the burden of proving any violations of the Code of Ethics for School Board Members under N.J.S.A. 18A:12-29. To prove that respondent violated N.J.S.A. 18A:12-24.1(g), complainant testified at the October 26, 2004 Commission meeting that complainant had personally discussed with him the nonrenewal of the chief school administrator's contract and the cost of the living arrangements of a multiple handicapped child whom she identified by name. However, the respondent has absolutely denied that these conversations with the complainant ever took place. Furthermore, the complainant testified that he has no other evidence to prove these allegations. The Commission notes that the complainant has not provided a specific date as to when these conversations took place. Based on this limited information, the Commission cannot find evidence that respondent did not hold confidential all matters pertaining to the school which, if disclosed, would needlessly injure individuals or the schools. Therefore, the Commission finds no probable cause to credit the allegations that respondent violated N.J.S.A. 18A:12-24.1(g).

Complainant also testified that, at a Board meeting, the respondent had her son's record expunged of certain conduct. Complainant admitted that he did not know at which Board meeting this took place and that he had no further proof to support this allegation. The Commission does not see how N.J.S.A. 18A:12-24.1(g) is applicable to this allegation. Furthermore, complainant has failed to provide evidence to prove the allegation. Therefore, the Commission finds no probable cause to credit the allegation that respondent violated N.J.S.A. 18A:12-24.1(g).

DECISION

For the reasons expressed above, the Commission finds no probable cause to credit the allegations that respondent violated the Code of Ethics for School Board Members under the School Ethics Act and therefore dismisses the complaint in its entirety.

REQUEST FOR SANCTIONS

Respondent has asked that the Commission find that the complaint was frivolous and impose sanctions pursuant to N.J.S.A. 18A:12-29(e). In order to find that a complaint, counterclaim, cross-claim or defense of the nonprevailing party was frivolous, the Commission must find on the basis of the pleadings, discovery, or the evidence presented that either:

1) The complaint...was commenced, used or continued in bad faith, solely for the purpose of harassment, delay or malicious injury; or

2) The nonprevailing party knew, or should have known, that the complaint...was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law. [N.J.S.A. 2A:15-59.1]

There is no evidence that the complaint was commenced, used or continued in bad faith, solely for the purpose of harassment, delay or malicious injury. Furthermore, based on the testimony of complainant, it is clear that he believed that there was a reasonable basis for the complaint because he believed that respondent had failed to hold confidential all matters pertaining to the schools. For the foregoing reasons, the Commission finds that the complaint was not frivolous and denies the respondent's request for sanctions against the complainant.

This decision is a final decision of an administrative agency. Therefore, it is appealable only to the Superior Court--Appellate Division. See, New Jersey Court Rule 2:2-3(a).

Paul C. Garbarini
Chairperson

Resolution Adopting Decision – C33-04

Whereas, the School Ethics Commission has considered the pleadings and the response filed by the parties and the documents submitted in support thereof; and

Whereas, the Commission finds no probable cause to credit the allegations that Respondent violated N.J.S.A. 18A:12-21 et seq.; and

Whereas, the Commission has reviewed the proposed decision of its staff dismissing the complaint; and

Whereas, the Commission agrees with the proposed decision;

Now Therefore Be It Resolved that the Commission hereby adopts the proposed decision to dismiss as its final decision in this matter and directs its staff to notify all parties to this action of the Commission's decision herein.

Paul C. Garbarini, Chairperson

I hereby certify that the Resolution
was duly adopted by the School
Ethics Commission at its public meeting
on December 21, 2004.

Lisa James-Beavers
Executive Director